

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

June 14, 2011

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Upton:

On May 31, 2011, I wrote to you about my concerns that the Committee was not following your policies, including discretionary CutGo, in considering H.R. 1705, known as the TRAIN Act. Today, I am writing to raise similar concerns about three bills that the Energy and Power Subcommittee and the Environment and Economy Subcommittee are scheduled to mark up this week.

When the Committee organized earlier this year, you announced “the central policies in deciding what legislation is scheduled for consideration in Committee.”<sup>1</sup> As one of your policies, you stated that the Committee would be following a discretionary CutGo rule.<sup>2</sup> You also announced that the practice of not specifying authorization amounts was over.<sup>3</sup>

Yesterday, the Energy and Power Subcommittee noticed that a markup will be held on H.R. 1938, relating to the Keystone XL pipeline, and H.R. 2054, relating to re-enrichment of DOE’s uranium tails. On Thursday, I understand the Environment and the Economy Subcommittee will markup H.R. 1391, relating to coal ash.

Both H.R. 1938 and H.R. 2054 impose substantive functions upon an agency that require funding for their performance. However, neither bill provides a specific limitation on the amount of appropriations authorized, nor does either bill comply with discretionary CutGo by

---

<sup>1</sup> Press Release, House Committee on Energy and Commerce, Chairman Upton's Remarks from Committee Organizational Meeting (Jan. 20, 2011) (online at <http://energycommerce.house.gov/News/PRArticle.aspx?NewsID=8155>).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

The Honorable Fred Upton  
June 14, 2011  
Page 2

reducing spending in another discretionary program to pay for their new functions. H.R. 1938 places a new, coordinating duty upon the Secretary of Energy. H.R. 2054 will require the Secretary to set up and manage a new program to re-enrich uranium tails.

H.R. 1391, as introduced, does not raise these issues because it simply prohibits EPA from exercising its existing authority. However, an amendment in the nature of a substitute that has been circulated substantially amends H.R. 1391 to establish a new program to set requirements for the disposal of coal ash. The amendment in the nature of a substitute does not provide a specific limitation on the amount of appropriations authorized, nor does it comply with discretionary CutGo by reducing spending in another discretionary program to pay for the new program.

As I explained in my May 31, 2011, letter, bills like these authorize new federal programs but place no limits on the amount of funds that can be appropriated to implement them. Under well understood principles of appropriations law, they direct the Appropriations Committee to appropriate such sums as the appropriators deem necessary. This violates both your policy of considering only legislation that contains specific limits on the amounts that can be appropriated and your policy of requiring reductions in other authorized programs to offset any new authorizations.

I renew my request that you clarify the Committee's policies on specific authorizations and discretionary CutGo. If you have decided to abandon the policies you previously announced, you should inform all members of the Committee of your new policy. If you intend to adhere to your policies, you should postpone the mark ups scheduled for this week until CBO can score the bills and discretionary offsets can be identified. What you should not do is mislead the public about the effect of these bills by pretending that they comply with discretionary CutGo and your policy regarding specific authorizations.

Thank you for consideration of my request.

Sincerely,



Henry A. Waxman  
Ranking Member